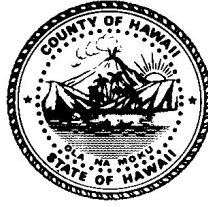


Mitchell D. Roth
Mayor

Deanna S. Sako
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County of Hawai'i PLANNING DEPARTMENT

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July 15, 2024

John Clark
Melinda Clark
12-4719 Pahoa-Kalapana Road
Pahoa, Hawai'i 96778

E-mail: johnnyguy61@gmail.com

Dear Darren,

SUBJECT: Application: SUBDIVISION VARIANCE | PL-SVAR-2024-000050
Applicant: JOHN CLARK
Owners: JOHN AND MELINDA CLARK
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply.
Tax Map Key: (3) 2-9-004:033; (PL-SUB-2023-000224)

Upon review of your Variance Application, the Planning Director certifies the **Approval** of Variance PL-SVAR-2024-000050, subject to variance conditions. The variance grants relief for PL-SUB-2023-000224 from constructing minimum County dedicable water supply system improvements for one (1) out of the two (2) lots as required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance is from the proposed subdivision's minimum requirements pursuant to HCC, Chapter 23 (Subdivisions), Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

BACKGROUND

1. **Location.** The referenced property, Lot 8, containing a total of approximately 22.161 acres, is situated in Kaiwiki 3rd, So. Hilo, Hawai'i.
2. **County Zoning.** Agriculture – 10 acres (A-10a).
3. **State Land Use.** Agricultural (A).

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4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Important Agricultural Lands (ial).
5. **Subdivision Code Requirements.** The subdivision code requires that subdivisions be served by a water system meeting the minimum requirements of the County Department of Water Supply (DWS) and be provided with water mains and fire hydrants installed to and within the subdivision in accordance with the rules and regulations of the Department of Water Supply (DWS).
6. **Subdivision Request/PPM.** Subdivision application PL-SUB-2023-000224 was submitted to subdivide the subject property into two (2) lots. Further action on the subdivision application has been deferred pursuant to the letter of January 24, 2024, in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements for two (2) lots was acknowledged by the Planning Department letter dated January 22, 2024. This variance application includes background history and circumstances and information regarding the pending subdivision application.
8. **Agency Comments and Requirements.**
 - a. State of Hawai‘i-Department of Health (DOH): No comments was received from the State of Hawai‘i – Department of Health (DOH).
 - b. County of Hawai‘i Fire Department (HFD): No comments was received from the Hawai‘i County Fire Department (HFD)
 - c. Department of Water Supply (DWS): No comments were received from the Hawai‘i County – Department of Water Supply (DWS) with regards to this variance request. However, we have attached a copy of the comments from DWS for the associated subdivision (PL-SUB 2023-000224) application. **(Exhibit A).**
 - d. No other agency’s comments were solicited, and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated June 22, 2024, regarding the posting of a public notification sign on the subject property pursuant to Section 23-17(c) of the Hawai‘i County Code (HCC). Pictures of the posted sign were also submitted. The evidence also indicates that on June 5, 2024, a notice of the application was served upon the surrounding property owners as required by Section 23-17(a).

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10. **Comments from Surrounding Property Owners or Public.** There were no written comments received from the surrounding property owners or the public.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property.*

The Variance application meets criterion (a) for the following reasons(s):

The subdivision request is for two (2) lots in keeping with the existing Agriculture - 10 acres (A-10a) zoning. Although a dedicable water system is a requirement of the code, the Department of Water Supply indicates that that the subject property is not within the service limits of the Department's existing water system facility. The Department of Water Supply (DWS) has state in part "*extensive improvements and additions, which may include, but not limited to source, storage, booster pumps, transmission, and distribution facilities, would be required.*" Therefore, it would be unreasonable for the subdivider to shoulder the costs associated with extending/upgrading the DWS system to service the subject subdivision of two (2) lots. The request is for one-lot of the two (2) lots, so this variance is reasonable and complies with "Rule 22" Water Variance. Therefore, in lieu of constructing water system improvements to either extend/upgrade the Department of Water Supply facilities or provide a private water system to Department of Water Supply standards for the pending two (2) lot subdivision, a more reasonable alternative can be allowed through Rule 22, Water Variance.

The above special and unusual circumstances would deprive the applicant of developing this property and interfere with the best use of this property. Therefore, for this six (6) lot subdivision, the best use and manner of the development allows for individual rainwater catchment system in keeping with the rural, agricultural character of the area.

- (b) *There are no other reasonable alternatives that would resolve the difficulty.*

The Variance application meets criterion (b) for the following reasons(s):

The DWS has indicated that the existing water system is unavailable to serve the additional lot; and the existing water system facilities cannot any further support water service to the

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subdivision. Constructing water system improvements to extend the Department of Water Supply (DWS) facilities or provide a private water system to Department of Water Supply (DWS) standards for the pending two (2) lot subdivision would be placing excessive demands upon the applicant because of the extensive improvements and additions required to upgrade the existing Department of Water Supply (DWS) water system facilities.

- (c) *The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

The Variance application meets criterion (c) for the following reasons(s):

Given that there is adequate rainfall (approximately 160 -180 inches annually) to support individual water catchment for the lots, the granting of this variance would be consistent with the general purpose of the district. Water catchment is consistent with the intent of the policies of the general plan in that it will further housing and agricultural production opportunities in this agricultural area. Water catchment will not be materially detrimental to the public welfare as it serves only private parties.

Subject to conditions, granting of the variance will not cause substantial, adverse impact to the area's character or to adjoining properties.

Given that the subject area receives sufficient annual rainfall, a water variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the Hawai'i County General Plan.

DETERMINATION-VARIANCE CONDITIONS

The variance to permit the proposed two (2)-lot subdivision of the subject property without providing dedicable water system improvements meeting Department of Water Supply standards, is hereby **Approved** subject to the following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.

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3. The owners, their assigns, or successors shall file a written agreement document with the Planning Department within one (1) year from the issuance of tentative subdivision approval. This written agreement shall contain deed language, being covenants, conditions, and restrictions affecting the lots created by the proposed subdivision which is not serviced by a County dedicable public water system.

The agreement shall be duly recorded at the State of Hawai'i, Bureau of Conveyances by and at the cost and expense of the owners. A copy of the recorded document shall be supplied to the Planning Department for our files.

If there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title of the existing property or approved subdivided lots.

4. The subdivider and all grantees, successors, and assigns acknowledge that the parcels were created by a variance, from the normal subdivision requirements of Hawai'i County, and that there are no longer any special or unusual circumstances applying to the property, and hence, no grounds exist or will exist for another variance, from the Subdivision Code to permit further subdivision of the properties, unless County dedicable public water system requirements and other requirements of HCC Chapter 23, Subdivisions, are met.
5. The owners, grantees, successors, and assigns agree and accept the fact that a County dedicable public water system will not be extended, to serve the lots within proposed subdivision PL-SUB-2023-000224.
6. The owners, grantees, successors, and assigns agree and accept the fact that the County will not bear the responsibility of supplying public water to the subdivided lots. No further subdivision of the lots will be permitted unless County dedicable public water system requirements and other requirements of HCC Chapter 23, Subdivisions, are met.
7. No condominium property regime will be allowed, nor will an 'Ohana Dwelling Unit be permitted or allowed.
8. Any dwelling constructed on any created lot not served by the Department of Water Supply, shall be provided with, and maintain a private rainwater catchment system, which includes a minimum

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6,000-gallon water storage capacity for domestic consumption or potable uses. This private water storage system shall adhere to the University of Hawai‘i’s College of Tropical Agriculture and Human Resources’ “Guidelines on Rainwater Catchment Systems for Hawai‘i,” as well as the DOH requirements related to water testing and water purifying devices.

9. In addition to the 6,000-gallon water storage capacity, for domestic consumption or potable uses, each permitted dwelling on a lot, not served by the Department of Water Supply, shall also be provided with a **minimum** 3,000-gallon water storage capacity dedicated for firefighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible fire apparatus connector system and access routes, shall meet with the approval of the Hawai‘i Fire Department. The Hawai‘i Fire Department also advises, as a precautionary measure for other uninhabited structures, that consideration be given to the provision of a similar water storage system for firefighting and emergency purposes.
10. If the County notifies the owner(s) of the lot(s) created that the County water system has been upgraded or an improvement district initiated to enable service to the lots, the owner(s) of the lots shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the DWS.
11. The pending subdivision application’s (PL-SUB-2023-000224) final plat map shall meet all the requirements of the Hawai‘i County Zoning Code and the Subdivision Code that are not covered by this variance.
12. The subdivider, owner(s), their assigns, or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements, land use and the public’s health, safety, and welfare.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

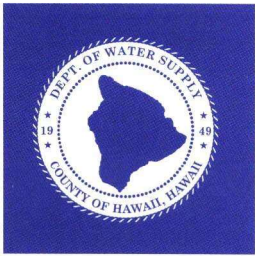
Zendo Kern
Zendo Kern (Jul 18, 2024 07:49 HST)
ZENDO KERN
Planning Director

LHN:ta
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Enclosures: Exhibit A- Department of Water Supply Comments

cc via email: DPW-Engineering
DWS-Engineering
HFD
Subdivision Section - PL-SUB-2023-000224
Alan Gunn, GIS Section, Planning Dept.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

February 2, 2024

REC'D HAND DELIVERED

EXHIBIT A

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

**SUBJECT: Preliminary Plat Map and Defer Action
Subdividers – John and Melinda Clark Trust
Tax Map Key (3) 2-9-004:033 (PL-SUB-2023-000224)**

COH PLANNING DEPT
FEB 5 2024 PM2:16

We have reviewed the subject application and have the following comments and conditions.

Please be informed that the subject parcel is served by an existing 5/8-inch meter (Account No. 500-00938), which is limited to an average usage of 400 gallons per day and suitable for only one (1) single-family dwelling. The subject parcel extends beyond the service limits of the Department's existing water system facilities.

Therefore, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive water system improvements would be required, which may include, but not be limited to, additional source, storage, booster pumps, and transmission facilities. Currently, funding is not available, and no time schedule is set for such improvements by the Department.

Should the subdivision be approved by the Planning Department, we request that the applicant designate, in writing, which lot within the proposed subdivision will be assigned the existing meter. The applicant shall be informed that the existing meter shall not be shared with the other proposed lots and the water system piping between the lots shall not be interconnected in any way.

Should there be any questions, please contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at 961-8070, extension 256.

Sincerely yours,

Keith K. Okamoto, P.E.
Manager-Chief Engineer

RQ:dfg

copy – John and Melinda Clark Trust
The Independent Hawai'i Surveyors

... Water, Our Most Precious Resource ... Ka Wai A Kāne ...

The Department of Water Supply is an Equal Opportunity provider and employer.